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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,327	12/01/2000	Glen Jorgensen	Z0090 7027	4739

7590 08/13/2002

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EXAMINER

MARSCHALL, ARDIN H

ART UNIT PAPER NUMBER

1631

DATE MAILED: 08/13/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/728,327

Applicant(s)

JORGENSEN ET AL.

Examiner

Ardin Marschel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 9-34 is/are pending in the application.
- 4a) Of the above claim(s) 33 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) 9-34 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17 2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other

### DETAILED ACTION

Applicant's election without traverse of Group I (claims 9-32) in Paper No. 8, filed 5/6/02, is acknowledged.

Applicants are hereby notified that the required timing for the correction of drawings has changed. See the last 6 lines on the sheet which is attached entitled "Attachment for PTO-948 (Rev. 03/01 or earlier)". It is noted that a PTO Form 948 is also attached herewith. Due to the above notification Applicant is required to submit drawing corrections within the time period set for responding to this Office action. Failure to respond to this requirement may result in abandonment of the instant application or a notice of a failure to fully respond to this Office action.

Claims 9-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 9-29 cite the word "interactive" in the preamble of independent claim 9. Such a word in the art commonly refers to interaction with a human operator during operation. Confusingly the claims cite a control module without any such limitation therein. It is thus unclear whether the preamble controls the metes and bounds of the claims or the actual system limitations in the body of the various claims 9-29. The metes and bounds of this interactivity are also interpretable as being directed to sensor data being utilized to control processing, but this is an assumption which is not clearly worded in the claims. Clarification via clearer claim wording is requested.

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Similarly, claims 30-32 cite controlling of a cell processing system in line 1 of claim 30 but confusingly without any "controlling" limitations in the body of any of claims 30-32. Thus, the metes and bounds of what is meant by said "controlling" are vague and indefinite. Clarification via clearer claim wording is requested.

Claim 26 contains the abbreviation "IR" which causes the claim to be vague and indefinite. Applicants are suggested to insert the full name thereafter, preferably in parentheses.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 9-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drobish et al. (P/N 5,639,658).

Figures 1 and 2 of Drobish et al. depict a system which is utilized for cellular fermentation and growth as also summarized in the section entitled "SUMMARY OF THE INVENTION" in columns 3-4. The "DETAILED DESCRIPTION OF THE INVENTION" section starting in column 4 further details the system components. It is noted that nutrient feed lines with appropriate pumps and valves are summarized in columns 7-8 as also required in instant claim 9, lines 3-4 and lines 10-11. The valves may be optionally computer controlled as noted in column 7, lines 34-40. The cells are added as an inoculum with measured cellular quantitation noted via cell density in column 7, lines 51-60, which describes the instantly claimed cell module with cell sensor for supplying biological cells for processing as required in instant claim 9, lines 5-6. The cell processing is detailed in columns 7-10 including sterilization of supply tubes or conduits and purifying out desired products of the process as required in instant claim 9, lines 7-9. The processing is measured and sensed via various sensors or probes as noted in the bridging paragraph between columns 8 and 9 as well as required in instant claim 9, lines 12-13. Included in columns 8-10 is the control of the processing as needed from probe or sensor data as also required in instant claim 9, lines 14-17. Sterilization to prevent unwanted contamination is summarized in column 8, lines 38-56, as also required in instant 9, last 2 lines.

Thus, it would have been obvious to someone of ordinary skill in the art at the time of the instant invention to operate and produce a system of cellular fermentation as in Drobish et al. with computer control as a suggested option thus resulting in the practice of the instant invention.

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No claim is allowed.

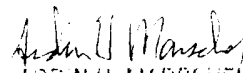
Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993)(See 37 CFR § 1.6(d)). The CM1 Fax Center number is either (703)308-4242 or (703)305-3014.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ardin Marschel, Ph.D., whose telephone number is (703)308-3894. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, Ph.D., can be reached on (703)308-4028.

Any inquiry of a general nature or relating to the status of this application should be directed to Patent Analyst, Tina Plunkett, whose telephone number is (703)305-3524 or to the Technical Center receptionist whose telephone number is (703) 308-0196.

August 9, 2002

  
ARDIN H. MARSCHEL  
TECHNICAL CENTER 1600